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9 **Attorneys for Defendant**  
10 **HOLBROOK ASPHALT, LLC**  
11 **and JOSEPH McDONALD**

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 MICHELLE MAITA and ROBERT MAITA,  
15 individually and as husband and wife,

16 Plaintiff,

17 v.

18 JOSEPH MCDONALD, individually;  
19 HOLBROOK ASPHALT, LLC, a foreign  
20 limited company; DOES 1 through XX,  
21 inclusive; and ROE CORPORATIONS 1  
22 through XX, inclusive,

23 Defendants.

CASE NO.:

(Removed from 8<sup>th</sup> Judicial District Court, State  
of Nevada Case No.: A-19-788692-C)

**PETITION FOR REMOVAL**

24 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

25 PLEASE TAKE NOTICE that Defendants, JOSEPH MCDONALD and HOLBROOK  
26 ASPHALT, LLC, by and through their attorneys of record, Wolfe & Wyman LLP, hereby remove  
27 this action to the United States District Court, District of Nevada, and in support thereof, state the  
28 following:

1. Upon information and belief, this matter was commenced on February 1, 2019, when  
Plaintiffs, Michelle Maita and Robert Maita, by and through their attorneys of record, Mainor Wirth  
LLP, filed a Complaint in the Eighth Judicial District Court of Nevada in and for the County of  
Clark. A true and correct copy of this Complaint is attached hereto as **Exhibit A**.

2. Joseph McDonald ("McDonald") and Holbrook Asphalt LLC ("Holbrook")  
(collectively, "Defendants") are Defendants in the above-entitled action.

3. Upon information and belief, Defendant Holbrook was served with the Summons and Complaint on or about March 4, 2019. A copy of the Summons is attached hereto as **Exhibit B**.

4. Upon information and belief, Defendant McDonald has not been served with the Summons and Complaint.

5. Defendants filed their Answer on April 29, 2019. A copy of the Answer is attached hereto as **Exhibit C**.

6. Defendants also filed a Demand for Jury Trial on April 29, 2019. A copy of the Demand is attached hereto as **Exhibit D**.

7. This Petition is timely filed pursuant to 28 U.S.C. § 1446(b). This Petition is filed with the Court within thirty (30) days after determining that Defendant McDonald was living in Arizona.

8. Defendants remove this case on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. Defendant is informed and believes that diversity is satisfied as follows:

- a. Defendants are informed, believe, and thereon allege Plaintiffs are residents of the state of Nevada. (Compl. at ¶¶ 1-2.)
- b. Defendant McDonald is a resident of the state of Arizona.
- c. Defendant Holbrook is a limited liability corporation with its principal place of business in Utah. All members of Holbrook are residents of Utah.
- d. Pursuant to 28 U.S.C. § 1332(a), there is a sufficient amount in controversy which exceeds the jurisdictional threshold of \$75,000.00. Such information was contained in Plaintiffs' pre-litigation demand letter to Defendant Holbrook's insurance carrier, United Fire & Casualty ("UFG"). The letter confirmed that Plaintiffs' alleged damages are in excess of \$500,000.00, not including future medical expenses, past and future lost wages, past and future pain and suffering, and other related damages. See Plaintiffs' Policy Limit Demand Letter attached hereto as **Exhibit E**.

9. Based on the above-referenced allegations pursuant to 28 U.S.C. § 1441, *et seq.*, Defendants are entitled to remove this entire action from the Eighth Judicial District Court of Nevada, to the United States District Court, District of Nevada, and Defendants so wish to exercise

1 that right.

2 10. Pursuant to 28 U.S.C. § 1446(a), Defendants have annexed all process, pleadings, and  
3 orders served upon it as follows:

- 4 a. Complaint – Exhibit A  
5 b. Summons – Exhibit B  
6 c. Answer – Exhibit C  
7 d. Defendants’ Demand for Jury Trial – Exhibit D  
8 e. Plaintiffs’ Policy Limit Demand Letter - Exhibit E

9 11. Pursuant to 28 U.S.C. § 1441(c), a true copy of this removal has been filed  
10 concurrently with the Eighth Judicial District Court of Nevada and served upon the Plaintiff.

11 Defendants reserve the right to supplement this Petition for Removal when additional  
12 information becomes available. Defendants further reserve all rights including, but not limited to,  
13 defenses and objections as to venue, personal jurisdiction, and service. The filing of this Petition for  
14 Removal is subject to, and without waiver of any such defense or objection.

15  
16 DATED: May 13, 2019

WOLFE & WYMAN LLP

17  
18 By: /s/ Cheryl C. Bradford  
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20 Nevada State Bar No. 9765  
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22 Las Vegas, NV 89119  
23 Attorneys for Defendants  
24 **HOLBROOK ASPHALT, LLC**  
25 **and JOSEPH McDONALD**  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2019, the foregoing **PETITION FOR REMOVAL** was served by the following means to the person listed below:

\_\_\_\_\_ a. EFC System (you must attach the “Notice of Electronic Filing”, or list all person persons and addresses and attach additional paper if necessary):

  X   b. United States Mail, postage fully pre-paid (List persons and addresses. Attach additional paper if necessary):

Bradley S. Mainor, Esq.  
MAINOR WIRTH  
6018 S. Ft. Apache Rd.  
Suite 150  
Las Vegas, NV 89148

*Attorneys for Plaintiff*

/s/ Evelyn M. Pastor

Evelyn M. Pastor

An employee of WOLFE & WYMAN LLP